

**Notice of Allowability**

Application No.

09/697,719

Examiner

David H Kruse

Applicant(s)

NAKAJIMA ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment of 30 September 2004 and the Interview of 17 December 2004.
2. ☒ The allowed claim(s) is/are 2,5,6,24,25,43,45,47,49,51 and 70; renumbered 2,4,5,1,3,8-11,7 and 6 respectively.
3. ☒ The drawings filed on 27 October 2000 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☒ Certified copies of the priority documents have been received in Application No. 09/302,357.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date SAME.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☒ Other Status Statement

### STATUS OF THE APPLICATION

1. Because the instant Examiner's Amendment supercedes the Office action mailed 29 December 2004, no response to the Office action is required nor will said response be entered. All responses by Applicant should be directed to this Examiner's Amendment.

### EXAMINER'S AMENDMENT

2. An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Kristi Rupert on 17 December 2004.

Claim 2 (AMENDED) The method according to claim 24, wherein the [nucleotide sequence] polynucleotide is operably ligated to a polynucleotide encoding a promoter [sequence] and a polynucleotide encoding a terminator [sequence] both of which are functional the plant cell.

Claim 24 (AMENDED) A method for producing a transgenic plant which is resistant to a weed control compound, comprising the steps of:

introducing into a plant cell, a [nucleotide sequence] polynucleotide encoding a variant of a plant protoporphyrinogen IX oxidase that lacks the FAD binding sequence; [expressing the nucleotide sequence;] and

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regenerating said plant cell into a transgenic plant which is resistant to a weed control compound.

Claim 25 (AMENDED) The method according to Claim 24, wherein the variant of a plant protoporphyrinogen IX oxidase is [derived from] a variant of a soybean protoporphyrinogen IX oxidase.

At claim 43, line 2, -- transgenic -- has been inserted before "plant".

At claim 45, line 3, "of" has been replaced with -- comprising --.

Claim 47 (AMENDED) A method for selecting a plant which comprises applying a protoporphyrinogen IX oxidase inhibitory-type herbicidal [weed control] compound [to which the plant of claim 43 is resistant] to a growth area [of] comprising the plant of claim 43 and other plants, and selecting [either] a plant on the basis of difference in growth between the plants.

Claim 70. (AMENDED) The method according to claim 24, wherein said polynucleotide encodes a variant of a plant protoporphyrinogen IX oxidase lacking a [further lacks the] chloroplast transit signal.

3. The Examiner proposed claim amendments to Applicant's representative, Kristi Rupert on 8 December 2004, which addressed matters of form, to put the application in conditions for allowance. On 17 December 2004 Applicant's representative conveyed to the Examiner that Applicant had accepted the proposed Examiner's amendments.

4. The following is an examiner's statement of reasons for allowance: The amendments to the claims have been made as a matter of form, not affecting the scope

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of the invention. Support for the amendments can be found on page 106 of the specification as filed and within the claims.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David H. Kruse, Ph.D. whose telephone number is (571) 272-0799. The examiner can normally be reached on Monday to Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Amy Nelson can be reached at (571) 272-0804. The fax telephone number for this Group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (571) 272-0547.

DAVID H. KRUSE, PH.D.  
PATENT EXAMINER



David H. Kruse, Ph.D.  
17 December 2004

6. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.